

1 total cost.

2 Q At the time you were considering
3 the chairing decision, did you try to quantify
4 what the different annual total cost would be
5 between applying that surcharge across all D2
6 subscribers, and applying that surcharge only
7 to sports tier subscribers?

8 A We did.

9 Q And what was the result?

10 A It was in excess of [REDACTED]

11 Q Per year?

12 A Yes, per year.

13 Q Now, you also testified earlier
14 that you've offered the NFL an extension of
15 the current deal, which expires on April 30th,
16 and they have not been interested. Has the
17 NFL done anything else in response to the
18 looming expiration of the contract?

19 A They have.

20 Q What have they done?

21 A They've put a crawl on our feed, a
22 crawl meaning a -

1 MR. PHILLIPS: Your Honor, I've
2 got to -- this is a little bit beyond the
3 scope of certainly my cross. I didn't ask him
4 about this. And going to into crawl on -

5 MR. PEREZ-MARQUES: Your Honor, we
6 believe the circumstances surrounding the
7 imminent expiration of this contract, it's
8 very important for the Court to understand in
9 consideration of a possible remedy.

10 MR. PHILLIPS: It's limited by my
11 direct, by my cross, Your Honor, I thought.

12 JUDGE SIPPEL: Well -

13 MR. PHILLIPS: And particularly if
14 we're in a time-sensitive situation.

15 MR. PEREZ-MARQUES: The answer
16 would have taken less time than the objection.

17 JUDGE SIPPEL: All right. Well,
18 I'm going -

19 MR. PHILLIPS: I'm going to have
20 to -

21 JUDGE SIPPEL: Yes, go ahead.

22 MR. PHILLIPS: I'm going to have

1 to examine, Your Honor, on this stuff.

2 JUDGE SIPPEL: Well, that's what
3 he's here for.

4 MR. CARROLL: Your Honor, this
5 took three minutes, and that's what he -

6 JUDGE SIPPEL: I'll take the hit
7 on this. I asked him a question right up
8 front what was going on now, in a general way,
9 so blame it on me. Go ahead, ask the
10 question.

11 BY MR. PEREZ-MARQUES:

12 Q What has the NFL been doing in
13 response to the looming deadline?

14 A They've put a crawl on our feed of
15 the service, which is a bar across the top of
16 the screen that advises customers, our
17 customers that they're going to lose the NFL
18 Network, and directs them to an NFL telephone
19 number.

20 Q Now, why would Comcast subscribers
21 lose the NFL Network, as of that date?

22 A Because the contract will have

1 expired, and the NFL, presumably, is intending
2 to de-authorize us.

3 JUDGE SIPPEL: What's the date on
4 that? I'm sorry. Is that May 1st?

5 THE WITNESS: Yes, April 30th.

6 JUDGE SIPPEL: April 30th.

7 BY MR. PEREZ-MARQUES:

8 Q Would Comcast have any right to
9 carry the NFL Network at all beyond that date?

10 A No.

11 MR. PEREZ-MARQUES: No more
12 questions, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. PHILLIPS:

15 Q Now, Mr. Bond, you understand that
16 in terms of your offer to extend, that was on
17 the same terms. Right?

18 A Yes, sir.

19 Q That meant with the NFL Network on
20 a premium sports tier?

21 A On a sports and entertainment
22 tier, yes.

1 Q Right. And when you talk about
2 the crawl being viewed by viewers of Comcast,
3 those are viewers who are watching the NFL
4 Network. Correct?

5 A Yes.

6 Q Those are the ones who paid extra
7 money just to get to see the NFL Network.
8 Correct?

9 A No.

10 Q Oh, it's not, sir?

11 A No.

12 Q Most of them are, aren't they?

13 A No.

14 Q Who sees the NFL Network if you
15 don't pay for it?

16 A Those subscribers are paying for
17 the sports and entertainment tier.

18 Q Oh, I'm sorry. But they're
19 watching the NFL Network when they see the
20 crawl. Correct?

21 A If they're watching the -- if
22 they're seeing the crawl, they're watching the

1 NFL Network. That's correct.

2 Q Right. And the NFL Network is, in
3 fact, the strongest programming you have on
4 that sports tier, is it not?

5 A I don't have any information that
6 says that that's true.

7 Q Okay. Now, you talk about the
8 scarce resource of analog. Versus and Golf
9 channel are both taking up some of that scarce
10 resource. Correct?

11 A Yes.

12 Q And they're both broadcast in high
13 definition?

14 A Yes.

15 Q Now, is it your understanding that
16 Comcast has made an offer to extend the terms,
17 and yet there are no other conversations
18 happening between these parties?

19 A That isn't what I said.

20 Q So, that's not the whole story, is
21 it, sir?

22 A No, I think I said earlier -

1 JUDGE SIPPEL: Well, he didn't
2 say.

3 MR. PHILLIPS: Oh, okay.

4 JUDGE SIPPEL: He didn't say it's
5 not the story, period.

6 MR. PHILLIPS: All right. I don't
7 have any further questions, Your Honor.

8 JUDGE SIPPEL: Thank you.

9 MR. SCHONMAN: Your Honor, the
10 Bureau does.

11 JUDGE SIPPEL: Yes, sir.

12 RECROSS EXAMINATION

13 BY MR. SCHONMAN:

14 Q With regard to the crawl that we
15 were talking about a moment ago.

16 A Yes.

17 Q That is designed to send a message
18 to the audience?

19 A To the Comcast customers, yes.

20 Q Do you have any reason to believe
21 that it's also a subtle message being sent to
22 Comcast, as well?

1 A I think the NFL is trying to
2 create difficulty for us.

3 Q How so?

4 A They're trying to incite customers
5 to leave Comcast. That's my read of it.

6 Q Have there been any discussions
7 among those at Comcast about the crawl?

8 A Yes.

9 Q What did those discussions consist
10 of?

11 A Well, we believe it violates the
12 contract.

13 MR. SCHONMAN: I have no further
14 questions.

15 JUDGE SIPPEL: Sounds like a third
16 lawsuit in the wings. I have nothing. As far
17 as I'm -- anybody else have anything more on
18 this side?

19 MR. PEREZ-MARQUES: No, Your
20 Honor. Thank you.

21 JUDGE SIPPEL: You're excused as a
22 witness. Thank you, sir.

1 THE WITNESS: Thank you.

2 JUDGE SIPPEL: I think there's
3 only one witness left. Is that right?

4 MR. CARROLL: One witness left.

5 JUDGE SIPPEL: Yes. Don't talk to
6 the one witness about your testimony.

7 MR. CARROLL: Let me go get our
8 last witness, Your Honor.

9 JUDGE SIPPEL: Thank you, sir.

10 (Off the record comments.)

11 MR. CARROLL: Your Honor, we have
12 our next witness.

13 JUDGE SIPPEL: All right. Bring
14 the witness in.

15 MR. CARROLL: He's here.

16 JUDGE SIPPEL: All right. Please
17 take the stand, sir.

18 MR. CARROLL: This is Brian
19 Roberts, the CEO of Comcast.

20 JUDGE SIPPEL: All right. Let me
21 administer the oath.

22 MR. CARROLL: We're on the record.

1 JUDGE SIPPEL: Would you raise
2 your right hand, sir.

3 WHEREUPON,

4 BRIAN ROBERTS
5 was called as a witness and, after having been
6 first duly sworn, was examined and testified
7 as follows:

8 JUDGE SIPPEL: Thank you, sir.
9 Please be seated. All right. Let's proceed.

10 (Off the record comments.)

11 MR. CARROLL: Your Honor, may I
12 start?

13 JUDGE SIPPEL: Please do.
14 Everybody got their Blackberries off, and the
15 reporter is on board. Right? Okay. Let's
16 go.

17 MR. CARROLL: Okay. Good
18 afternoon, Mr. Roberts.

19 DIRECT EXAMINATION

20 BY MR. CARROLL:

21 Q Could you tell us your current
22 position?

1 A I'm Chairman and Chief Executive
2 Officer of Comcast.

3 Q Have you prepared a written direct
4 testimony for this matter?

5 A I've submitted testimony, yes.

6 MR. CARROLL: Okay. Your Honor,
7 may I distribute -- this is Comcast Exhibit 4.
8 This is already in evidence. May I distribute
9 a copy for the witness?

10 JUDGE SIPPEL: Please.

11 MR. CARROLL: If you'd like
12 another one, I have one here.

13 JUDGE SIPPEL: I would, sir, if
14 you have it.

15 MR. CARROLL: I do.

16 JUDGE SIPPEL: Thank you.

17 MR. CARROLL: Do you guys have
18 copies?

19 JUDGE SIPPEL: So this has been
20 received already as Comcast Exhibit 4. Thank
21 you. Are you comfortable enough, Mr. Roberts?
22 You all set to go?

1 THE WITNESS: I'm good.

2 JUDGE SIPPEL: Okay. You can use
3 our glasses, if you'd rather, or use the
4 bottle.

5 THE WITNESS: I'm good.

6 JUDGE SIPPEL: Whatever.

7 THE WITNESS: Thank you.

8 BY MR. CARROLL:

9 Q Okay. Mr. Roberts, let's do a
10 minute about your background. How did you
11 come to be the CEO of Comcast? I want to
12 apply for that job. I want to know how to get
13 that job.

14 A I was fortunate, my father started
15 Comcast when he was 40 in 1962. He's 89 years
16 old, and my mother is about to be 88, so I
17 feel very fortunate. He started Comcast when
18 he was 40. I graduated in 1981 from the
19 University of Pennsylvania, and went right
20 working for the company through summer jobs in
21 high school and college, and it's the only
22 career I've had. Sometime I work in Flint,

1 Michigan, I worked in the suburb of Pittsburgh
2 climbing poles, selling door-to-door cable, so
3 I've learned the cable business along the way.
4 And somewhere, I think in the early '90s, I
5 became President of the company. I became
6 Chairman in mid-2000.

7 Q And, when the company started out,
8 how big was it when it started out, and where
9 did it start out?

10 A Well, the first cable system my
11 dad bought was in Tupelo, Mississippi, like
12 1,700 customers. Today, we have over 30
13 billion in revenues. When I got out of
14 college it was 20 million in sales, and today,
15 as I just said, so it's been an incredible
16 only in America kind of experience, and the
17 chance to be part of what I feel was really
18 the beginning of Comcast, although, it got
19 started long before I got there. But the
20 first 19 years, kind of just the viability,
21 and then the last 25 years have been
22 incredible.

1 Q And, is it a public company,
2 public shareholders?

3 A Went public in 1972.

4 Q And the stock trades on?

5 A NASDAQ.

6 Q On NASDAQ. Now, I'm going to
7 shift and focus on the events that have us
8 here this afternoon, Friday afternoon of this
9 week of trial. I'm going to turn your
10 attention back to 2003-2004, in the first
11 instance. Did there come a time when you came
12 to be in negotiations with the NFL about doing
13 a carriage deal?

14 A Yes. The NFL reached out to us to
15 consider a new network that were thinking of
16 launching, the NFL Network. I had meetings
17 with a variety of people, including Paul
18 Tagliabue, and Steve Bornstein, and several
19 owners about their new channel. And I was
20 involved, although not directly in the final
21 negotiations of the contract, but in the idea
22 of the channel, and some of the possibilities

1 as the channel got created.

2 Q Now, when the NFL -- when those
3 negotiations got started, did you have a
4 relationship of any sort with the NFL already?
5 In particular, were you carrying any NFL games
6 as part of any of your channels at that time?

7 A We did not have a direct
8 relationship, and that had been sort of a sore
9 point, from my perspective. The Sunday Ticket
10 package was something that we coveted, and I
11 had visited with various members of the NFL
12 over the years to try to procure access to the
13 Sunday Ticket, but they, basically, always
14 were exclusive to DirecTV, and said it was --
15 that that was not possible, to have a direct
16 relationship.

17 Q Did there come a time when the NFL
18 said anything to you about what it would take
19 for you to have a chance to get Sunday Ticket?

20 A Well, at one point we submitted a
21 proposal of non-exclusive, where we would
22 share Sunday with DirecTV, or anybody else

1 that they chose to give it to, and we offered
2 hundreds of millions of dollars, maybe as much
3 as a half a billion a year, as our share of
4 that pro rata of the rest of the cable
5 industry, and that did not get it done.

6 Q Now, did Sunday Ticket come up in
7 the context of the discussions, the
8 negotiations in 2004? And could you describe
9 that to us, if it did.

10 A Well, it did. When they announced
11 they were launching the NFL Network, one of
12 the sort of their statements was that in order
13 to have a shot the next time Sunday Ticket
14 would come up for sale, it was imperative that
15 we be carrying the NFL Network as DirecTV
16 would be doing, and that without that we would
17 have no shot. And, so, they very much
18 suggested and said that we should try to reach
19 an agreement on NFL Network, if we wanted any
20 shot to bid on Sunday Ticket.

21 Q And who at the NFL told you that?

22 A Very directly, Steve Bornstein,

1 but it was part and parcel with the
2 conversations with Paul.

3 Q Paul Tagliabue?

4 A Yes.

5 Q And was Mr. Tagliabue the
6 Commissioner at the time?

7 A Yes.

8 Q Did you have discussions in the
9 2004 time period with Mr. Tagliabue with
10 respect to the contract that was ultimately
11 signed in 2004?

12 A Yes. There was some phone calls,
13 and I believe a few meetings. Most of the
14 conversations, I think, were ultimately held
15 by Matt Bond and Steve Burke with Mr.
16 Bornstein.

17 Q So you had some dealings with Mr.
18 Tagliabue, but not extensive.

19 A Right.

20 Q Okay. Did you have any social
21 relations with Mr. Tagliabue at the time in
22 any respect?

1 A Not particularly. He's a very
2 nice gentleman, but not -- I wouldn't say a
3 friend, or somebody that I could read real
4 easily, very polite.

5 Q Okay. And did you succeed in
6 signing up a carriage deal in 2004?

7 A We did.

8 Q And what level of carriage do you
9 agree to carry NFL Network at?

10 A On the digital, one of our digital
11 packages, we call D2.

12 Q D2. Now, at the time you did
13 that, were the other large cable companies
14 carrying the NFL Network already?

15 A I don't believe very many were,
16 no.

17 Q So, did you consider yourself a
18 leader in that respect?

19 A Well, we were very focused on
20 trying to have a relationship with the NFL.
21 And, I guess, you would say we took a
22 leadership role.

1 Q Was that something that you
2 discussed with the NFL at the time, that they
3 wanted you to step into that role to help that
4 process?

5 A Definitely. They sought me out,
6 in particular, both including, at some point,
7 Mr. Kraft, who was, at the time, the head of
8 the Television Committee, I believe, one of
9 the leaders of the TV Committee, and had
10 relationships. But, also, Mr. Tagliabue, and
11 others said it would be great if I personally
12 helped try to help their network be
13 successful, and they engaged me directly, and
14 I tried my best.

15 Q So, you did that.

16 A And we reached an agreement.

17 Q So, the contract is in place in
18 2004 at D2. Are there any complaints that you
19 hear from the NFL that they don't like the D2
20 distribution level in any respect?

21 A I thought -- I mean, I haven't
22 looked back to see what press release went out

1 that day, but I'm pretty sure they were
2 thrilled that we had launched them broadly
3 across all of our markets. And I think they
4 were very pleased with the contract that we
5 signed.

6 Q Okay. So, let me roll forward
7 about a year, and we're now into 2005. And
8 does it come to be a time when you have
9 negotiations again with the NFL about a
10 different deal, another deal?

11 A Well, in the first deal,
12 consistent with the way they structured it,
13 was that there would be an opportunity to get
14 -- either to get the Sunday Ticket package, or
15 if they chose to create a new package, which
16 wasn't clear back in the '04 time table, if
17 they created a new package, they would attempt
18 to have a direct relationship with us, with
19 one of our cable channels, if we were so
20 interested in bidding on that package.

21 Q Okay. And what happened on Sunday
22 Ticket, did you get a Sunday Ticket deal?

1 A No. We never really got to first
2 base, to mix metaphors here. I remember one
3 vivid conversation with Commissioner
4 Tagliabue. I called him up to see what was
5 going on, and he said, "Don't waste your
6 time."

7 Q Don't waste your time in doing
8 what?

9 A In bidding. We're going to sign
10 up with DirecTV again.

11 Q And did the NFL sign up another
12 deal with DirecTV?

13 A They did.

14 Q And was it exclusive, once again?

15 A Yes.

16 Q Okay. So what was the deal that
17 you came to be talking and negotiating with
18 the NFL about at the end of '05?

19 A Well, it evolved, but they were
20 pondering, and ultimately chose to create an
21 eight-game package that was over six weeks,
22 that would be a new package of games to cable.

1 Those games previously were probably on Sunday
2 Ticket, or on broadcast, and they were going
3 to -- as they renegotiated with the
4 broadcasters, they were going to create a new
5 eight-game package.

6 Q Okay. And how did you find out
7 that there was this opportunity to negotiate
8 for this?

9 A I'm not sure I recall, but I'm
10 sure somewhere along the line Mr. Tagliabue
11 and I talked about it, but it may have been --
12 they never put out quite a term sheet, if you
13 will, or a bid sheet, but it was clear they
14 were evolving their thinking around this. And
15 somewhere along the line, it was an auction.

16 Q An auction in the sense that were
17 there others who were invited to bid on the
18 eight games, as well?

19 A Absolutely.

20 Q Okay. Did you have any sense for
21 who your competition was?

22 A Well, they are very discreet, but

1 at the same time, let you know, like you might
2 run into somebody in the lobby of the NFL
3 building. I would say I probably went to the
4 NFL headquarters 20 times, and maybe run into
5 NBC one day, and Fox another, Turner another.
6 And then they were very clear that the NFL
7 Network was doing it themselves, was a
8 possibility, so I think -- and they would say
9 well, there's -- propose things, but they
10 wouldn't say exactly whom, but it was pretty
11 clear, other cable programmers or the NFL
12 Network, itself.

13 Q And who were you dealing with in
14 this time period now, late 2005, with respect
15 to the auction process for the eight games?

16 A Well, Paul Tagliabue partly, but
17 there's several people in the room every time
18 you meet with them, which would include Roger
19 Goodell, Steve Bornstein many times would be
20 in the room, not necessarily taking the lead.
21 And then they would, from time to time, bring
22 owners into those meetings from the TV

1 Committee, and over time, they exposed us to
2 many, and eventually all of the owners on
3 their TV Committee. But Bob Kraft took a lead
4 role in many of the meetings, as well.

5 Q Okay. Now, how did you know what
6 components to include in the bid that you
7 ultimately made?

8 A Well, they kind of -- there were
9 many discussions, as I said, maybe 20 in-
10 person meetings. That's just with me, and
11 then there were many members of my team, and
12 many phone calls, and side calls. It kind of
13 evolved with some direction given by them, and
14 the suggestions made by ourselves.

15 Q Okay. And was one of the pieces
16 that came to be included in the deal that --
17 was there an equity component to the deal?

18 A Yes.

19 Q And where did that come from, that
20 idea?

21 A They very much suggested that, and
22 asked -- and suggested that could we be a

1 partner, if we were -- our idea, we had
2 previously bid for ESPN's parent company,
3 Disney. The idea of building a new multi-
4 sport network was something we certainly
5 thought was viable. And they said well, we
6 might like to be part of that, and a number of
7 our owners would like to get as much equity,
8 as possible, in such a new venture. That
9 would be great if you would include that in
10 your bid.

11 Q And the equity we're referring to
12 is equity that who would own in what?

13 A They would own in OLN, which later
14 became Versus.

15 Q And OLN, at the time, was the name
16 for your channel. Correct?

17 A Yes.

18 Q And you were trying to acquire
19 these games.

20 A Right.

21 Q And in this process, the NFL made
22 it clear they wanted some equity in your

1 channel as part of the deal. Is that right?

2 A Yes. In fact, on top of that, it
3 evolved, I think Mr. Kraft one day said is
4 there any way we could later convert the
5 equity in your channel into Comcast equity?
6 I really like your company. I think he said he
7 owned some of our stock, and would that be a
8 possibility, that we could someday trade the
9 channel equity into the parent company equity.

10 Q And did you -- how did you respond
11 to that?

12 A We were trying to make the deal,
13 so we said if that's something you're
14 interested in, we put that in our bid.

15 Q And was there a cash component to
16 the offer that you made?

17 A Yes, there was a rights fee, and I
18 believe -- so, an annual rights fee for the
19 games that was a payment. And then, in
20 addition, they asked could we help, even if we
21 did this, what would happen to the NFL
22 Network. They had been frustrated with